

kiwifruit. In comparison, 1994–95 marketing year budgeted expenditures were \$169,157, which is \$3,526 less than the \$172,683 recommended for this fiscal year. The assessment rate of 1.5 cents per tray or tray equivalent is .5 cents more than last year's assessment rate of 1.0 cents. The major budget category for 1995–96 is \$102,850 for administrative, staff and field salaries.

Assessment income for 1995–96 is estimated to total \$135,000 based on anticipated fresh domestic shipments of 9 million trays or tray equivalents of kiwifruit. The assessment income will have to be augmented by \$37,683 from the Committee's reserves to provide adequate funds to cover budgeted expenses. Funds in the reserve at the end of the 1995–96 fiscal year are estimated to be \$40,245. These reserve funds will be within the maximum permitted by the order of one fiscal year's expenses.

An interim final rule regarding this action was published in the July 13, 1995, issue of the **Federal Register** (60 FR 36032). That rule provided for a 30-day comment period. No comments were received.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant material presented, including the Committee's recommendation, and other available information, it is found that this final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1995–96 fiscal year began on August 1, 1995, and the marketing order requires that the rate of assessment for the fiscal year apply to all assessable kiwifruit handled during the fiscal year; (3) handlers are aware of this rule which was recommended by the Committee at a public meeting; and (4) an interim final rule was published on this action and provided for a 30-day comment period; no comments were received.

## List of Subjects in 7 CFR Part 920

Kiwifruit, Marketing agreements, Reporting and recordkeeping requirements.

## PART 920—KIWIFRUIT GROWN IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 920 which was published at 60 FR 36032 on July 13, 1995, is adopted as a final rule without change.

Dated: September 27, 1995.

**Sharon Bomer Lauritsen,**

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 95–25131 Filed 10–10–95; 8:45 am]

**BILLING CODE 3410–02–P**

## 7 CFR Part 1212

[FV–95–701]

### Lime Research, Promotion, and Consumer Information Order; Referendum Order and Procedures

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Interim final rule with request for comments; referendum order.

**SUMMARY:** The purpose of this rulemaking action is to give notice of a referendum and to provide procedures for which the Department of Agriculture will use in conducting the referendum to determine whether the issuance of the Lime Research, Promotion, and Consumer Information Order is favored by a majority of the producers, producer-handlers, and importers voting in the referendum. The Lime Board at its August 7, 1995, meeting requested that a referendum be held as soon as possible. The referendum order establishes the voting period, representative period, method of voting, and agents.

**DATES:** This rule is effective October 11, 1995 through December 31, 1995.

Comments must be received by October 26, 1995. The representative period for establishing voter eligibility shall be the period from September 1, 1994, through August 31, 1995. A referendum shall be conducted by mail ballot from November 1, 1995, through November 15, 1995.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, PO Box 96456, Room 2535–S, Washington, DC 20090–6456. Three copies of all written materials should be submitted, and they will be made available for public inspection in the

Office of the Docket Clerk during regular working hours. All comments should reference the docket number of this issue of the **Federal Register**.

### FOR FURTHER INFORMATION CONTACT:

Richard Schultz, Research and Promotion Branch, Fruit and Vegetable Division, AMS, USDA, room 2535–S, PO Box 96456, Washington, DC 20090–6456. Telephone (202) 720–5976.

**SUPPLEMENTARY INFORMATION:** A referendum will be conducted among eligible lime producers, producer-handlers, and importers to determine whether the issuance of the Lime Research, Promotion, and Consumer Information Order (Order) (7 CFR part 1212) is favored by a majority of persons voting in the referendum. The Order is authorized under the Lime Research, Promotion, and Consumer Information Act of 1990, as amended (Act).

The representative period for establishing voter eligibility for the referendum shall be the period from September 1, 1994, through August 31, 1995. Persons who have produced or imported 200,000 or more pounds of limes for the fresh market during the representative period are eligible to vote. The referendum shall be conducted by mail ballot from November 1, 1995, through November 15, 1995.

Section 1960 of the Act provides that the Secretary of Agriculture (Secretary) shall conduct a referendum not later than 30 months after the date on which the collection of assessments begins to determine whether the issuance of the Order is favored by a majority of the producers, producer-handlers, and importers voting in the referendum. Paragraph (b) of section 1960 of the Act requires that the Order continue in effect only if favored by such majority.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 1957 of the Act, a person subject to the Order may file a petition with the Secretary stating that the Order or any provision of the Order, or any obligation imposed in connection with the Order, is not in accordance with law and requesting a modification of the Order

or an exemption from the Order. The petitioner is afforded the opportunity for a hearing on the petition. After such hearing, the Secretary will make a ruling on the petition. The Act provides that the district courts of the United States in any district in which a person who is a petitioner resides or carries on business are vested with jurisdiction to review the Secretary's ruling on the petition, if a complaint for that purpose is filed within 20 days after the date of the entry of the ruling.

### **Regulatory Impact Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

The Department estimates that there are approximately 50 producers who produce at least 200,000 pounds annually and will be subject to the Order. A majority of producers subject to the Order will be classified as small entities. Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those having annual receipts of less than \$500,000.

The Department estimates that there are approximately 25 first handlers. Further, the Department estimates that there are approximately 35 importers who import at least 200,000 pounds and will be subject to the Order. A majority of first handlers and importers subject to the Order will be classified as small entities. Small agricultural service firms, which include handlers and importers, have been defined by the SBA as those having annual receipts of less than \$5,000,000.

Since the enactment of the Act, the character of the lime industry has significantly changed. As a result of the extensive damage to lime orchards in Florida by Hurricane Andrew in August 1992, domestic production has plummeted and the volume of imports has increased dramatically. Domestic production is not expected to reach pre-Hurricane Andrew levels for several more years because Florida accounted for a majority of domestic production.

Shipment reports of domestic limes, from January 1, 1994, through December 31, 1994, indicate truck shipments of 13.5 million pounds from Florida, 4.7 million pounds from California, and 1 million pounds from Texas for a total of 19.2 million pounds. Shipment reports

of imported limes for the same 12 month period indicate truck shipments of 292.9 million pounds from Mexico plus an additional 14.4 million pounds from 9 other countries. Imports currently represent roughly 94 percent of lime shipments in the United States.

The Administrator of the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

### **Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the referendum ballot has been approved by the Office of Management and Budget (OMB) and has been assigned OMB number 0581-0093. It is estimated that there are approximately 50 producers and producer-handlers and approximately 35 importers who will be eligible to vote in the referendum. It will take an average of 15 minutes for each voter to complete the referendum ballot.

### **Background**

The Lime Research, Promotion, and Consumer Information Act of 1990 (1990 Act) (Pub. L. 101-624, 7 U.S.C. 6201-6212) was enacted on November 28, 1990, for the purpose of establishing an orderly procedure for the development and financing of an effective and coordinated program of research, promotion, and consumer information to strengthen the domestic and foreign markets for limes. The Order required by the 1990 Act became effective on January 27, 1992 (57 FR 2985), after notice and comment rulemaking.

In March 1992 the Department conducted nomination meetings to nominate lime producers and importers for appointment to the Lime Board (Board). The Board members were appointed by the Secretary in September 1992 and the Board conducted its first meeting at the Department in Washington, DC in October 1992. During the course of this meeting, the Board and the Department concluded that a technical amendment to the 1990 Act was needed before an order could be implemented. Consequently, full implementation of the Order was delayed until the enactment of such technical amendment.

The Lime Research, Promotion, and Consumer Information Improvement Act (1993 Act) (Pub. L. 103-194, Dec. 14, 1993) contained the necessary technical amendment to properly cover the regulated commodity. The 1993 Act also provided for increasing the exemption level from less than 35,000

pounds annually to less than 200,000; terminating the initial Board; changing the size and composition of the Board; and delaying the initial referendum date.

A proposed rule was published in the April 7, 1994, issue of the **Federal Register** (58 FR 3446) inviting comments on amending the Order to reflect the provisions of the 1993 Act. A final rule was published in the February 8, 1995, issue of the **Federal Register** (60 FR 7435).

In March 1995, as a result of terminating the initial Board under the 1993 Act, the Department conducted nomination meetings to nominate lime producers and importers for appointment to the new Board. The Board members were appointed by the Secretary in June 1995 and the newly constituted Board met at the Department in Washington, DC in August 1995. At this meeting, amid concern over the changing character of the lime industry, the Board voted that a referendum be conducted before the Order is fully implemented to determine industry support.

In response to the Board's vote, the Department is issuing a referendum order and establishing procedures to be used in the conduct such referendum. The interim final rule will add a new § 1212.90 addressing these procedures. This section covers definitions, voting, referendum agent instructions, use of subagents, ballots, the referendum report, and confidentiality of information.

Pursuant to the provisions in U.S.C. 553, it is found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action formalizes the Department's approval to conduct a referendum as requested by the Board; (2) it is necessary that this rule be in place to conduct a referendum; (3) a 15-day period is provided to allow interested parties to comment prior to finalization; and (4) no useful purpose would be served by a delay of the effective date.

All written comments received in response to this rule by the date specified herein will be considered prior to finalizing this action. A 15-day comment period is considered appropriate because any changes to this rule should be in effect as soon as possible. The referendum begins November 1, 1995.

## Referendum Order

It is hereby directed that a referendum be conducted among eligible producers, producer-handlers, and importers to determine whether they favor the issuance of the Order. The representative period for establishing voter eligibility for the referendum shall be the period from September 1, 1994, through August 31, 1995. A referendum shall be conducted by mail ballot from November 1, 1995, through November 15, 1995.

Section 1960(a) of the Act specifies that “\* \* \* the Secretary shall conduct a referendum among producers, producer-handlers, and importers who (1) are not exempt from assessment \* \* \*; and (2) produced or imported limes during a representative period as determined by the Secretary. Section 1960(b) of the Act further specifies that “the referendum \* \* \* is for the purpose of determining whether issuance of the order is approved or favored by not less than a majority of the producers, producer-handlers, and importers voting in the referendum. The order shall continue in effect only with such a majority.”

Richard Schultz and Martha B. Ransom, Research and Promotion Branch, Fruit and Vegetable Division, Agricultural Marketing Service, PO Box 96456, Department of Agriculture, Washington, DC 20090-6456, are designated as the referendum agents of the Secretary of Agriculture to conduct this referendum. The procedures described below shall be used to conduct the referendum.

Ballots to be cast in the referendum, and any related material relevant to the referendum, will be mailed by the referendum agents to all known producers, producer-handlers, and importers. Persons who have produced or imported 200,000 or more pounds of limes for the fresh market during the representative period are eligible to vote. Such persons shall establish their eligibility by providing information on the ballot concerning their volume of production or importation. Any eligible producer, producer-handler, or importer who does not receive a ballot and related material should immediately contact the referendum agents.

## List of Subjects in 7 CFR Part 1212

Administrative practice and procedure, Advertising, Limes, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 1212 is amended as follows:

## PART 1212—LIME RESEARCH, PROMOTION, AND CONSUMER INFORMATION

1. The authority citation for 7 CFR part 1212 continues to read as follows:

**Authority:** 7 U.S.C. 6201-6212.

2. Section 1212.90 is added to read as follows:

**Note:** This section will not appear in the Code of Federal Regulations.

### Subpart A—Lime Research, Promotion, and Consumer Information Order

#### § 1212.90 Referendum procedures.

A referendum to determine whether eligible producers, producer-handlers, and importers favor the issuance of the Order shall be conducted in accordance with these procedures.

(a) *Definitions.* Unless otherwise defined below, the definitions of terms used in these procedures shall have the same meaning as the definitions in the Order.

(1) *Administrator* means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act in the Administrator's stead.

(2) *Order* means the Lime Research, Promotion, and Consumer Information Order, part 1212, subpart A, §§ 1212.1 through 1212.89, title 7 of the Code of Federal Regulations, including any amendment to the Order, with respect to which the Secretary has directed that a referendum be conducted.

(3) *Referendum agent* or *agent* means the individual or individuals designated by the Secretary to conduct the referendum.

(4) *Representative period* means the period designated by the Secretary.

(5) *Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity. For the purpose of this definition, the term “partnership” includes, but is not limited to:

(i) A husband and wife who has title to, or leasehold interest in, production facilities and equipment as tenants in common, joint tenants, tenants by the entirety, or, under community property laws, as community property, and

(ii) So-called “joint ventures” wherein one or more parties to the agreement, informal or otherwise, contributed capital and others contributed labor, management, equipment, or other services, or any variation of such

contributions by two or more parties so that it results in the production or importation of limes and the authority to transfer title to the limes so produced or imported.

(6) *Eligible producer or eligible producer-handler* means any person who produces 200,000 pounds or more of limes during the representative period and who:

(i) Owns or shares in the ownership of production facilities and equipment resulting in the ownership of the limes produced;

(ii) Rents production facilities and equipment resulting in the ownership of all or a portion of the limes produced;

(iii) Owns production facilities and equipment but does not manage them and, as compensation, obtains the ownership of a portion of the limes produced; or

(iv) Is a party in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce limes who share the risk of loss and receive a share of the limes produced. No other acquisition of legal title to limes shall be deemed to result in persons becoming eligible producers or eligible producer-handlers.

(7) *Eligible importer* means any person who imports 200,000 or more pounds of limes during the representative period. Importation occurs when commodities originating outside the United States are entered or withdrawn from the U.S. Customs Service for consumption in the United States. Included are persons who hold title to foreign-produced limes immediately upon release by the U.S. Customs Service, as well as any persons who act on behalf of others, as agents or brokers, to secure the release of limes from the U.S. Customs Service when such limes are entered or withdrawn for consumption in the United States.

(b) *Voting.* (1) Each person who is an eligible producer, producer-handler, or importer, as defined in these procedures, at the time of the referendum and during the representative period, shall be entitled to cast only one ballot in the referendum. However, each producer in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce limes, in which more than one of the parties is a producer, shall be entitled to cast one ballot in the referendum covering only such producer's share of the ownership.

(2) Proxy voting is not authorized, but an officer or employee of an eligible corporate producer, producer-handler, or importer, or an administrator,

executor, or trustee of an eligible producing, producing and handling, or importing entity may cast a ballot on behalf of such entity. Any individual so voting in the referendum shall certify that such individual is an officer or employee of the eligible producer, producer-handler, or importer, or an administrator, executor, or trustee of an eligible producing, producing and handling, or importing entity, and that such individual has the authority to take such action. Upon request of the referendum agent, the individual shall submit adequate evidence of such authority.

(c) *Instructions.* The referendum agent shall conduct the referendum, in the manner herein provided, under the supervision of the Administrator. The Administrator may prescribe additional instructions, not inconsistent with the provisions hereof, to govern the procedures to be followed by the referendum agent. Such agent shall:

(1) Prepare ballots and related material to be used in the referendum. Ballot material shall provide for recording essential information including that needed for ascertaining whether the person voting, or on whose behalf the vote is cast, is an eligible voter.

(2) Give reasonable advance public notice of the referendum:

(i) By utilizing available media or public information sources, without incurring advertising expense, to publicize the dates, places, method of voting, eligibility requirements, and other pertinent information. Such sources of publicity may include, but are not limited to, print and radio; and

(ii) By such other means as the agent may deem advisable.

(3) Mail to each eligible producer, producer-handler, and importer, whose name and address is known to the agent, the instructions on voting and a ballot. No person who claims to be eligible to vote shall be refused a ballot.

(4) At the end of the voting period, collect, open, number, and review the ballots and tabulate the results in the presence of an agent of the Office of Inspector General.

(5) Prepare a report on the referendum.

(6) Announce the results to the public.

(d) *Subagents.* The referendum agent may appoint any individual or individuals deemed necessary or desirable to assist the agent in performing such agent's functions hereunder. Each individual so appointed may be authorized by the agent to perform any and all functions which, in the absence of such

appointment, shall be performed by the agent.

(e) *Ballots.* The referendum agent and subagents shall accept all ballots cast; but, should they, or any of them, deem that a ballot should be challenged for any reason, the agent or subagent shall endorse above their signature, on the ballot, a statement to the effect that such ballot was challenged, by whom challenged, the reasons therefore, the results of any investigations made with respect thereto, and the disposition thereof. Ballots invalid under these procedures shall not be counted.

(f) *Referendum report.* Except as otherwise directed, the referendum agent shall prepare and submit to the Administrator a report on results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to analysis of the referendum and its results.

(g) *Confidential information.* The ballots and other information or reports that reveal, or tend to reveal, the vote of any person in the referendum shall be held strictly confidential and shall not be disclosed.

Dated: October 4, 1995.

**Lon Hatamiya,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 95-25165 Filed 10-10-95; 8:45 am]

**BILLING CODE 3410-02-P**

## **Rural Housing and Community Development Service**

### **Rural Business and Cooperative Development Service**

#### **Rural Utilities Service**

#### **Consolidated Farm Service Agency**

### **7 CFR Parts 1942 and 1980**

**RIN 0575-AA12**

## **Rural Business Enterprise Grants and Television Demonstration Grants; Technical Assistance and Training Grants; Nonprofit National Corporations Loan and Grant Program**

**AGENCIES:** Rural Housing and Community Development Service, Rural Business and Cooperative Development Service, Rural Utilities Service, and Consolidated Farm Service Agency, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Rural Business and Cooperative Development Service (RBCDS) and Rural Utilities Service (RUS) amend the agencies' policies and procedures governing the

administration of programs which authorize technical assistance as an eligible grant purpose. This action is necessary to implement legislation that prohibits duplication of technical assistance grant funding provided by the Forest Service (FS). The intended effect of this action is to require that grant funds may not be used to pay for technical assistance which duplicates assistance provided under an action plan funded by the FS under the National Forest-Dependent Rural Communities Economic Diversification Act during 5 continuous years from the date of grant approval by the FS.

**EFFECTIVE DATE:** October 11, 1995.

### **FOR FURTHER INFORMATION CONTACT:**

Jennifer Barton, Loan Specialist, Community Facilities Division, U.S. Department of Agriculture, Room 6304, South Agriculture Building, 14th Street and Independence Avenue SW., Washington D.C. 20250-0700, telephone (202) 720-1504.

### **SUPPLEMENTARY INFORMATION:**

#### **Classification**

This rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

#### **Environmental Impact**

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It has been determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

#### **Executive Order 12778**

The proposed regulation has been reviewed in light of Executive Order 12778 and meets the applicable standards provided in sections 2(a) and 2(b)(2) of that Order. Provisions within this part which are inconsistent with state law are controlling. All administrative remedies pursuant to 7 CFR part 1900, subpart B, must be exhausted prior to filing suit.

#### **Paperwork Reduction Act**

The information collection or recordkeeping requirements contained in these regulations have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control numbers 0575-0132, 0575-0123, and 0575-0121, in